IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10461 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHAHMAHAMAD DOSTMAHMAD SHEKH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10461 of 2003

MR BS BRAHMBHATT for Petitioner No. 1

MR RM CHAUHAN A.G.P. for Respondent No. 1-3

MS PJ DAVAWALA Standing Counsel for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 25/09/2003

ORAL JUDGEMENT

1. By way of this Special Civil Application, the petitioner has challenged the order of detention passed

against him by District Magistrate, Kheda at Nadiad on 17.05.2003 in exercise of powers conferred upon him by Section 3 (2) of the Prevention of Black Marketing and Maintenance of Supply of Essential Commodities Act, 1980 (hereinafter referred to as "P.B.M. Act"), directing the detention of the petitioner and in pursuance of which the petitioner came to be detained on 18.05.2003.

2. The ground as placed on record and served upon the petitioner reveal that the petitioner was a license holder of a fair price shop situated at village Sarsa, District Kheda. This fair price shop is also administering the card holders of the village Mahij. The authorities of supply department of the State Government during inspection and checking carried out during the period from 09.04.2003 to 08.05.2003 found that the bulk of blue kerosene which was to be distributed to the ration card holders of village Mahij on subsidize rate, was sold by the petitioner in open market to the extent of 648 liters deriving higher profit from the said sale. The details are given in the grounds paragraph 4. According to the authorities, the kerosene of blue colour is a essential commodity and was required to be distributed only according to control orders of the Government published in Essential Commodities Act. From the above material which was placed before the detaining authority, the order impugned came to be passed as aforesaid.

3. Learned advocate Mr.B.S. Brahmbhatt for the petitioner, learned A.G.P. Mr.Chauhan for respondents nos.1, 2 and 3 and Ms.P.J. Davawala learned Additional Standing Counsel for respondent no.4 - Union of India were heard at length. Affidavit-in-reply filed by respondents nos.1 and 2 is placed on record by learned A.G.P. and affidavit-in-reply filed by respondent no.4 Central Government is placed on record by Ms.Davawla, and the said affidavits are also taken into consideration.

4. Out of various contentions raised on behalf of the learned advocate for the petitioner and controverted by learned A.G.P. as well as learned Additional Standing counsel on behalf of the respondents, it appears that this matter can be disposed of on the ground whether right of the petitioner for effective representation to the concerned authority is breached. My attention is drawn to the documents placed at page 220, 224, 255, 267, 268, 271 and 280 of the compilation of this Special Civil Application. Most of the documents are xerox copies of the ration card holders and relied upon by the detaining authority as a material. These documents on perusal are

found to be partly illegible, though not completely illegible. However, even the documents which are partly illegible and when no full legible copy is supplied to the petitioner, right to make effective representation guaranteed under Article 22 (5) of the Constitution of India is certainly infringed. After going through the records, it is found that the detaining authority failed to supply legible copy of the said document to the detenu for making effective representation, consequently effecting adversely his right to make representation under Article 22 (5) of the Constitution of India. The documents which are partly legible are vital documents and they are mainly of ration card holders. Therefore, in this view of the matter, since right of the detenu is infringed for the effective representation, his further detention is bad in law. In this view of the matter, the order impugned in this Special Civil Application is required to be quashed and set-aside only on this ground.

In the result, this Special Civil Application is allowed with no order as to costs. The impugned order in this Special Civil Application passed by the District Magistrate, Kheda at Nadiad, on 17.05.2003 in exercise of powers conferred upon him by Section 3 (2) of the P.B.M. Act against the petitioner is quashed and setaside. It is directed that the petitioner be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule is made absolute.

[J.R. VORA, J.]

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